

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

PAUL M. HAYDEN,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 3:14-cv-1060-AC

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued a Findings and Recommendation in this case on December 16, 2014. Dkt. 18. Judge Acosta recommended that Plaintiff's Motion to Strike (Dkt. 13) be granted in part and denied in part. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1)(C). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, however, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the

Act], intended to require a district judge to review a magistrate's report to which no objections are filed."). Nor does the Act "preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. And the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

As no party has made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Acosta's Findings and Recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court ADOPTS Judge Acosta's Findings and Recommendation, Dkt. 18. Plaintiff's Motion to Strike (Dkt. 13) is GRANTED in part and DENIED in part. The United States' Third and Fifth Affirmative Defenses are STRUCK with leave to replead.

IT IS SO ORDERED.

DATED this 26th day of January, 2015.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge